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Navy Department Investigation Reviewed.

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BY

DEMOCRATS AND REPUBLICANS ALIKE.

As a part of the general attack upon the Administration, planned by its open and concealed enemies, gross and abusive charges of official misconduct were made against the Secretary of the Navy by Charles A. Dana, editor of the New York *Sun*. They were published in the most virulent and abusive language, and constantly reiterated in his disreputable newspaper. They originated, as afterwards appeared, with a former officer of the Navy Department, himself dismissed under suspicion of corruption by President Grant at the commencement of his Administration, were connived at by men in high position, worked up by hired defamers, and were paid for and published by Charles A. Dana.

In pursuance of the general plan, Mr. Austin Blair, of Michigan, then still pretending to be a Republican, but now the leading Democratic orator in the canvass of his State, assuming the responsibility of charges which no one else would notice, referred to them in the House of Representatives, and moved a committee of investigation. This was at first refused by the House because there was no responsible authority for the charges; but, at the request of the Secretary of the Navy, all objection was afterwards withdrawn, and the committee of investigation was finally raised on the 11th day of March, 1872.

This was no *whitewashing* committee. The majority of it were opposed to the Administration. It consisted of Mr. Blair, who had assumed and brought forward the charges of Charles A. Dana; Mr. Archer, of Maryland; and Mr. Warren, of New York, (Democrats,) and Messrs. Sargent, of California, and Peters, of Maine, (Republicans.)

Mr. Dana, the accuser, was permitted to appear with his counsel, and clothed with all the powers of the committee to investigate the administration of the Navy Department. The Secretary of the Navy declined to employ counsel, but appeared himself before the committee at every meeting to assist in the examination, answer questions, and give any information required. Mr. Dana was soon obliged to abandon his case, and after having been forced to acknowledge, under oath, that he had no knowledge of the truth of the charges he had so falsely made, left Washington suddenly and returned to New York.

The investigation was, however, pressed by the Secretary and proceeded with, and after a long and thorough examination, the committee made their report, signed by Messrs. Sargent, Peters and Mr. Warren, (one of the Democrats,) fully sustaining the Secretary in the legality, equity and propriety of all his action in regard, not only to the matters charged, but in regard to the general administration of his Department; and thoroughly and completely vindicating and proclaiming his personal integrity and honor, and denouncing in the strongest language the accusations against him as vile slanders. Mr. Archer, (the other Democrat of the committee,) added a few lines as an appendix to this report, concurring in "fully exonerating the Secretary of the Navy from all charges of fraud, corruption or dishonesty," but dissenting from the interpretation of law made by the committee; and Mr. Blair, himself, though he was in fact the responsible accuser, in his minority report, (which both the Democrats of the committee absolutely refused to sign)—after a general attack on the Navy Department and the Treasury, was yet obliged to say, "While I believe the administration of the Navy Department not creditable to the country at this time, I cannot say that the charges of personal corruption against the Secretary are made out in proof; as to that, therefore, he is to be acquitted."

The following are extracts from the report of the committee:

"The committee, with a view to the prompt investigation of these serious charges against the Secretary of the Navy, at once, as their first step, invited Charles A. Dana, the editor of the *Sun*, to attend their sessions. He appeared with his counsel, and was allowed to conduct the investigation, to summon and examine witnesses, to call for papers and documents, and to have the widest range of inquiry into all matters connected with the Navy Department, until he seized upon the temporary absence of the chairman of the committee as an excuse to withdraw from the case and abandon the investigation. This, however, he was not permitted to do until, on the demand of the officer accused, he had been required to be sworn and examined before the committee as to his knowledge

of the facts charged and the sources of his information.

"The committee do not deem it necessary to incumber this report with any detailed reference to the testimony in relation to these assaults on the personal character of the Secretary of the Navy and on the integrity of his administration. It is enough to say that, although the officer charged declined to avail himself of the privilege of appearing by counsel, while the accuser, with his counsel, was allowed the utmost freedom as to the extent of his investigation, yet he totally failed to produce a single witness, or any proof whatever, tending in the slightest degree to maintain the charges he had made, or affect in any manner the personal or official character of the Secretary.

"It would be superfluous for the committee to attempt to state the result of the testimony as to these various charges, or to show in detail the manner in which each and all of them have been conclusively refuted. *Not a single witness even pretended to establish one of them. Not a particle of testimony out of all the mass appended to this report has any tendency wha ever to show any fraudulent act or design on the part of the Secretary.* If it were desirable to refer to the testimony at all upon this subject in detail, it would not be for any purposes of refutation, but only to exhibit the malignant and wanton character of the libels which gave rise to this investigation.

"But the committee content themselves with saying, without more general reference to the proofs, that it appears, not only from the most searching examination that they have been able to make, but from the testimony of the accuser himself, that all of the charges published in the New York *Sun*—and none published in any other newspaper have been brought to the notice of this committee—'calculated to affect injuriously the reputation of the Secretary of the Navy, and to cast doubts upon the integrity of his administration of the Navy Department,' are totally devoid of any semblance of truth.

"In view of the fact that they were printed in a paper of large circulation, published in the chief city of the country, repeated from day to day in every phase of vituperation, long after the testimony, including that of their author, had shown their falsehood, the committee feel justified in denouncing them in the strongest terms, *as the most extraordinary libels ever published in this country against a public officer, and a shameful perversion of the privileges of the press.*

"Although, in the great latitude allowed to him, the author of these libels abstained from any attempt to prove his charges of corruption, and only tried to maintain certain alleged irregularities in the administration of the Navy Department.

"Nevertheless, the committee have fully investigated all matters brought forward by the editor of the *Sun*, and all such matters as were in any way suggested in the course of their inquiries. In this examination the Secretary has afforded them every facility, by the production of accounts, vouchers and exhibits, and by his explanations given under oath."

"After this full investigation, the committee are prepared to report that they do not find in all the testimony taken and herewith submitted any errors or irregularities of administration which would justify any action whetever by the House of Representatives, or tend to throw any discredit upon his administration."

THE SECOR CLAIM.

The payment to Secor & Co. of a balance of $93,000 due them for work done for the department was pressed by the accusers of the Secretary as illegal, and has been much harped upon by those who seek to deceive the uninformed. This case is easily understood when the facts are known.

The following are extracts from the report of the committee on this point:

"The facts in regard to these Secor claims were abundantly proved before the committee, and seem to be beyond dispute. During the war this firm contracted with the Navy Department for the building of certain monitors for the sum of $460,000 each. These vessels were built, accepted by the Department, and did good service. The Government was to furnish the plans and specifications within a certain time. These plans were long delayed.

"In the interval very essential changes were ordered by the Department during the progress of the work. A large amount of extra work was also ordered and performed during their construction. Notwithstanding these obstructions the Messrs. Secor, with praiseworthy zeal, pushed on the work and put the vessels, furnished with all the modifications and extras required, into the hands of the Government in time to do efficient service at Mobile and Fort Fisher. Having finished their work, and it being accepted by the Government, the Secors had, in common with the other contractors for other monitors built at the same time, large claims for additional compensation beyond the contract price. These claims were of two classes. One was for the additional cost of construction *under their contract*, arising out of the extraordinary rise in the price of labor and materials which took place during the time they were delayed by the Government. This class of claims were in the nature of damages. They were never acted upon by the Department, but were disposed of, with others of like nature, by legislation, as will appear. The other class (to which the claim for $93,000 belongs) was for the actual amount due for work and materials ordered, furnished and accepted, entirely extra to and outside of their contracts—claims of an ordinary character and subject to the ordinary action of the Department.

"All the claims of the second class, including that of Secor & Co., were taken up by the Department for final settlement in 1867, and referred to a board of which the late Admiral Gregory was president, (being the same board under whose supervision the monitors were originally built.) Most of the claims were settled, and claims, precisely similar in character and proportionate amount to the claim of Secor & Co., were examined, settled and paid to other contractors. This claim of Secor & Co., however, was not settled at that time, on account of the sudden death of Admiral Gregory. This broke up his board, and the claim was never acted upon by the Department until it came up under the present Administration in the spring of 1869. It was then presented to Secretary Borie, who referred it to Admiral Porter, and on the 6th of August, 1869, the matter was referred to a board consisting of Admiral Boggs, (who had been associated with Admiral Gregory before his death,) Chief Engineer Loring and Naval Constructor Easby, all of whom had had personal knowledge and superintendence of the details of the construction of ships of this class, and some of whom had had such knowledge and supervision of these particular vessels.

"These officers examined into the claims and reported that they were just, and had never been paid, and amounted to $93,000. On this report the Secretary of the Navy, in the exercise of his discretion, directed their payment; and afterward the Second Comptroller of the Treasury, in the discharge of his duty, scrutinized the claims, examined the laws relating to them, and upon full consideration passed them as correct; and thus the matter was fully adjudicated in the manner provided by law.

"It is now contended that this payment, however just, was barred by positive law, and was improperly made by the Secretary and approved by the Comptroller. To arrive at this conclusion it is necessary to assert that both the Secretary and Comptroller erred in their construction of the effect and operation of the law referred to. It should be observed that these two officers were the legal judges of this question, the Comptroller being by law the final judge.

"Under the law the Second Comptroller carefully examined the Secor claim and approved it. His action was beyond the control of the Secre-

tary. If it had been adverse to his previous decision, the Secretary could not have overruled it. It was not adverse; and it seems palpably unjust to arraign the Secretary for an exercise of his judgment which was concurred in and ratified by the law officer of the Treasury, intrusted by law with the final decision of the matter in question. Their action ought not to be impugned, except by a tribunal authorized by law to sit in judgment over both.

"But assuming that such an adjudication, made in the ordinary course of executive business, may properly be reviewed by an investigating committee of the House of Representatives, we have been able to find in it nothing but the fair exercise of official discretion.

"The claim was manifestly just, and had never been paid. It was due to citizens who had rendered efficient service in a critical time. To refuse payment would have been grossly inequitable.

"But it is asserted that the payment, however just, was barred by the provisions of the law of July 13, 1868, which provided for the payment of the first class of claims (the damages) above referred to. The committee think differently."

These claims for damages (including one by Secor & Co.) were referred in 1867 to another board for examination. The board reported various sums due *as damages* to various contractors, including the Secors. Their report expressly states that they considered and made allowance *only* for *the damages* growing out of the delay of the Government.

Congress, by the act of July 13, 1868, made a special appropriation to pay the specific amounts reported *as damages* by this board, and provided that the payment should be in full "of all claims, on account of the vessels, *upon which the board made the allowance as per their report*, under the act of March 2, 1867."

The claimants accepted this payment upon the assurance of Mr. Grimes, the chairman of the Senate Committee on Naval Affairs, that the act of 1868 would not bar their claim for extra work, viz: the claim for $93,000.

"It is now contended by those who dispute the propriety of the payment that the proviso above quoted barred, not only all further claims for damages 'under the act of March 2, 1867, upon which the board made the allowance, as per their report,' but also all claims for work and materials done and furnished on the vessels and accepted by the Government, however just they might be, *and whether the board made any allowance for them, 'as per their report,' or not;* and that therefore the payment was improper."

The report continues:

"The committee dissent entirely from this view, and hold that the payment was properly and legally made. The act of 1868 provided only for the payment of the particular amounts reported and allowed, and that such payment should be in full discharge of the claims so reported and allowed.

"It is easy to read the act carelessly and to stop, as so many who have quoted it have done, with the words 'in full discharge of all claims *on account of vessels*.' If we stop there it is as easy to assert that the plain words of the statute must prevent the Secretary from paying any possible claim of these parties upon these vessels, although such claim might be for rebuilding and repairs after having been in action.

"But there are other words in the act which cannot be overlooked. The bar is simply this: 'In full discharge of all claims, on account of the vessels, *upon which the board made the allowance*,' *as per their report* under the act of March 2, 1867. The board made no report upon the vessel; but they did make their report and allowance upon certain *claims on account of the vessels* under the act of 1867; therefore the act provided that the payment of the sum allowed should be in full discharge of all claims *upon which that allowance was made*, as appears by the report.

"It is obvious that if it had been the intention of Congress to say that this payment must be accepted in full of all claims of these parties of every kind on account of these vessels, it was very easy to say so in plain terms. In fact, it was only necessary to stop with the words 'on account of the vessel;' and the fact that pains were taken to insert the additional clause shows clearly that it was intended to limit the statutory discharge to the precise claims for which the allowance was made and the payment directed.

"This is more definitely shown also by the fact that an amendment, providing that the payment should be in 'discharge of all claims arising out of the matters in connection with which the services and damages so claimed for arose,' was offered and rejected in the Senate.

"The committee therefore conclude that, in a mere legal point of view, the decision of the Secretary and Comptroller as to the construction of this act was correct.

"But, looking at the matter in its equitable aspects, it seems plain, that since it is proved that this extra work was in fact done on the order of the Government, and accepted by the Department; that the first board distinctly refused to consider it; that the second board examined it and pronounced it just and unpaid; and that no former disposition of it was ever made by the Department, it would be grossly unjust and unworthy of a Government dealing with a citizen, to set up an arbitrary legislative bar against an acknowledged liability, and to extort a relinquishment of one honest debt as a consideration for the payment of another and totally different claim admitted to be due, and established by legal adjudication.

"Men are apt to permit their notions of law and equity to become confused as to the dealings of nations. It would be clearer if the same case is stated as between private individuals.

"A builder contracts with a vestry to build a church at a contract price of $50,000. By the fault of the vestry the plans are delayed, and he suffers obstructions, which cost him, as he claims, $20,000. As the work goes on the vestry requires him to add a spire to the building, agreeing to pay its fair value beyond the contract price. For this he claims $5,000. The work being finished and accepted they disagree as to the payment of the first claim of $20,000, and agree to refer to arbitration all claims for increased cost caused by fault of the vestry. He produces his whole claim of $25,000, but the arbitrators refuse to consider the cost of the spire as beyond the scope of their powers, and they award him $5,000 for his claim for increased cost, being one fourth of the amount demanded. This amount is paid by the vestry, and they exact a receipt for that sum 'in full discharge of all claims against the vestry on account of the church, upon which the arbitrators made their allowance, as per their award, under the agreement dated March 2, 1867.' The builder afterward presents his bill of $5,000 for the spire, but the vestry produce their receipt, and insist that his claim is cut off. Could such an unconscionable position be justified morally or maintained in any court? Yet this is precisely the position in which it is insisted that the Secretary of the Navy ought to have placed the Government of the United States in its dealings with a citizen who had rendered it material service in time of war. And this is maintained on a sharp and literal construction of a statutory discharge, which is held to extinguish a just debt by its force as a positive law.

"The committee believe that it was the duty of the Secretary to search for such an interpretation of this law, within the fair import of its terms, as would save the Government from the humiliation of such an injustice.

"Some comment has been made upon the subject of the appropriation out of which this payment was paid. This was a matter for the consideration of the proper officers of the Treasury

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Department. It does not appear that any irregularity was committed in this respect.

"The statement of the Secretary clearly explains the position of the matter, as follows:

"'The fact that the payment of this claim was made from the proper appropriation is also clear and easily understood by any one familiar with the nature of the appropriation made for the bureaus of the Department and with the course of legislation on this subject. Previous to the act of the 15th of July, 1870, which separated the appropriations, and provided that the money appropriated for each year should be used only for the expenses and liabilities of that particular year, the amount of the appropriation to the credit of each bureau was made up not only of the money appropriated for the current year, but also of the balances of all former appropriations that remained unexpended.

"'The yearly appropriations were based on the amount of these balances, the latter being greater or less as the former were larger or smaller, and in some instances no appropriation was made, because the balance to the credit of the bureau was considered large enough for its liabilities and for the anticipated expenditures.

"'This sum, made up of current appropriations and balances, was liable for both current expenses and for liabilities; and, before the act of 1870, was and always had been held by the Departments and by the Treasury appropriate both for the current expenditure and for all the liabilities of the several appropriations whose balances went to make it up. Thus, at the time of the payment of the Secor claim out of the fund at the command of the Bureau of Construction and Repair of the Navy Department, that fund was made up not only of the appropriation for the then current year, but also of all the balances remaining of old appropriations, including the appropriation for the building of the very ships thus paid for. This amounted at the date of the payment to more than $800,000, and was the very fund liable for this claim, and those of like nature, and was, in fact, the same fund from which Mr. Welles had paid like claims to a very large amount, to other contractors, and like claims for work on these very ships, more than five times as large as that paid by the present Secretary.

"'Gentlemen, I have been in active practice as a lawyer for more than twenty years in a State where the law is strictly construed, and was for three years the official representative of a bar second to none in the country, and I say, as a lawyer, that however personal malignity may misrepresent this case, however demagogues may present the matter for political purposes, I am sure no lawyer who values his reputation as a lawyer, and who is informed of the facts of the case, will say, as a legal question, that this claim was barred by the law of 1868, and was not properly paid.'

"The committee have concluded that the action of the Secretary in the payment of this claim was not only within his discretion and that of the comptroller, but was warranted by law.

"It may be proper to remark, in connection with the transactions in the case of Secor & Co., and Perrine, Secor & Co., and in fact in regard to any of the matters examined by us, that a simple resolution of inquiry of the House of Representatives to the Secretary of the Navy would have readily disclosed all the facts developed before the committee, as they are all of record in the Department, were freely exhibited to the committee, and the expensive machinery of a Congressional committee was unnecessary to produce them.

"There were some other subject-matters suggested to and examined by the committee, but they were all within the legitimate discretion of the Secretary, exercised without impropriety on his part, either in motive or action; and your committee are not able to find any rule, either of law or of right, which forbids one Secretary to do justice to a *bona fide* public creditor merely because it has been denied or omitted by his predecessor.

"In conclusion, the committee remark that the Secretary of the Navy, during the period embraced in our investigations, has disbursed nearly $60,000,000 in the ordinary administration of his Department; and it is a matter of congratulation to the country that not only is there no stain or suspicion of dishonor left upon this officer, as the result of this investigation, but that the searching scrutiny, invited and facilitated by him, into the various and extended operations of his Department, has discovered as little pretence for attack as need for defence, or explanation even in matters of discretion and judgment."

Notwithstanding this thorough examination and conclusive report, signed by Republicans and Democrats alike, and its universal acceptance by Congress, the press, and the people, certain of the original promoters of these slanders are said to be now repeating them, as political capital, on the stump and in localities where their complete refutation is unknown or has been forgotten. Their motives are easily understood, but of the meanness of their malignity it is difficult to conceive.

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